IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON''BLE MR JUSTICE M.H.S. ANSARI

AND
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 1814 of 2005

Between:

M/s. Power Oxides Private Limited,
No.12, 13 & 14 Phase III,
Autonagar, Guntur - 522 001.

Rep. by its Assistant Manager,
Mr. B. Siva Sankar.

..... PETITIONER

AND

1. The Deputy Commercial Tax Offficer,
Srikalahasthi,
O/o. The Commercial Tax Officer,
Puttur, Camp at Srikalahasthi, Chittoor District.
2. The Commercial Tax Offficer,
Kothapeta, Vasundhara Complex,
Near Zinna Towers,
Guntur.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue an appropriate Writ, order or direction more particularly, one in the nature of Writ of Mandamus declaring the impugned detention order dated 01-2-2005 issued by the 1st respondent detaining one consignment of red lead covered by lorry bearing No.
AP 7X - 4919 and way bill No. T 2301188, as illegal and unjustified in the facts and circumstances of the case.

Counsel for the Petitioner: MR.B.SRINIVAS

Counsel for the Respondent Nos.1 and 2: MR.K.RAJA REDDY,

GP FOR COMMERCIAL TAXES

The Court, at the stage of admission, made the following:

O R D E R:

Additional affidavit filed into Court today be kept with the record.

It is seen from the averments made therein that the petitioner is a registered dealer under Andhra Pradesh General Sales Tax Act. It is also the case of the petitioner that he has performed job work for the manufacturers being M/s Southern Batteries Private Limited, Bangalore, who are also registered dealers in the State of Karnataka for manufacture of red lead (lead oxide – red). It is the case of the petitioner that for the purpose of manufacturing the said product, petitioner was supplied with necessary raw material viz., lead ingots by the said SBPL and the same was sent to the petitioner vide delivery challan No.3025, dated 11-01-2005. The delivery challan is in Form Annexure II in terms of Central Excise Provisions. In the order of detention of goods, the first respondent has referred to the same at Item No.4 of the impugned notice, pointing out irregularities found by him. Amongst the irregularities noticed as specified in the impugned detention order, the only defect noticed insofar as the said delivery challan is concerned is that the Karnataka General Sales Tax Number of the consignee is not mentioned. Petitioner has furnished the same in a neat copy of the delivery challan and therein the numbers are mentioned as follows:

It is the case of the petitioner that he has only performed job work and no sale of goods is involved. The goods received by the petitioner are being returned after job work performed by the petitioner and for that purpose, reliance has been placed upon documents viz., commercial delivery challan No.3025, also in the commercial invoice and the way bill.

The grievance of the petitioner in the instant writ petition is with respect to the detention order, dated 01-02-2005, that the goods have been detained at the check post barrier. From the impugned detention order, it is seen that certain irregularities have been specified. Explanation to the same has been furnished by the petitioner by his letter dated 02-02-2005. The only question now is whether the goods are liable to be released to the petitioner and allowed to proceed on their onward journey to the consignee.

It cannot be disputed that respondent No.1 is conferred the authority to make a check and can also detain goods for the purpose of such enquiry as to the liability to pay sales tax and the same can be for a limited duration of three days within which the demand can be raised and if the same is not paid, then further action has to be taken by respondent No.1 with consent or approval of the superior authorities for recovery of such taxes.

In the instant case, such permission of superior authority appears to have been obtained by respondent No.1 from the Commercial Tax Officer, Puttur, but it does not appear that any assessment was made or served on the petitioner as to its tax liability, nor was petitioner informed of payment of any such tax or security before release of the goods.

Be that as it may, even according to the respondent, the detention is for alleged evasion of tax. The object being to recover the tax allegedly due on the goods in question in the State of A.P., the value of the goods is in the range of Rs.6,97,000/- , the sales tax thereon would be in the range of Rs.82,000/-. Keeping the same in

view, we are inclined to dispose of the instant writ petition with certain appropriate directions:

1. If petitioner deposits a sum of Rs.25,000/- (Rs.Twenty five thousand only) with respondent No.1 towards ad-hoc payment of tax, the goods shall forthwith be released to the petitioner; and

2. It shall be open to the respondent No.1 to conduct such enquiry as may be open to him at law and for the respondent No.2 to make such assessment as may be within his province.

The above payment of ad-hoc sum of Rs.25,000/- towards tax is subject to the final orders that may be passed by respondents 1 and 2 as the case may be, with liberty to the petitioner, if aggrieved thereby, to avail of such remedies as are open to him at law.

Writ petition accordingly stands disposed of.

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M.H.S.ANSARI, J

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T.CH.SURYA RAO, J

14-02-2005.

Note: Issue C.C. on priority basis.

Lrkm.

To

1. The Deputy Commercial Tax Offficer,
Srikalahasthi,
O/o. The Commercial Tax Officer,
Puttur, Camp at Srikalahasthi, Chittoor District.
2. The Commercial Tax Offficer,
Kothapeta, Vasundhara Complex,
Near Zinna Towers,
Guntur.

3. The Special Government Pleader for Commercial Taxes, High Court of A.P., High Court Buildings, Hyderabad (O.U.T).

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